

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

WARREN D. CROZIER and PAULA M.
CROZIER, for minor A.C.,

Plaintiffs,

vs.

WESTSIDE COMMUNITY SCHOOL
DISTRICT; WESTSIDE MIDDLE
SCHOOL; ELIZABETH MEYERS,
English Teacher; RUSSELL OLSEN,
Principal Westside Middle School;
ENID SCHONEWISE, Assistant
Superintendent; and BLANE MCCANN,
Superintendent,

Defendants.

8:18CV541

**MEMORANDUM
AND ORDER**

This matter is before the Court on Plaintiffs' Motion for Appointment of Counsel (Filing 3) and for case management.

In a Memorandum and Order entered on January 17, 2019 (Filing 8), the Court denied Plaintiffs' Motion for Appointment of Counsel and dismissed this action without prejudice. However, the Court's Judgment (Filing 9) was reversed by the United States Court of Appeals for the Eighth Circuit on September 2, 2020, and the case was "remanded with directions to request counsel for the plaintiffs under 28 U.S.C. § 1915(e)." (Filing 16.) The Court of Appeals' mandate issued on September 23, 2020. (Filing 18.)

Accordingly, the Court at this time will appoint a member of the bar who graciously has agreed to represent Plaintiffs in this matter, and will direct that the case proceed to service of process.

IT IS THEREFORE ORDERED:

1. Plaintiffs' Motion for Appointment of Counsel (Filing 3) is granted, as provided below.

2. With thanks for accepting the appointment, Ms. Abby Osborn and the Schiffermiller Law Office, P.C., L.L.O., are hereby appointed to represent Plaintiffs in this matter.¹

3. Ms. Osborn and/or any other counsel from the Schiffermiller Law Office are directed to promptly enter their appearance as counsel in this case.

4. Upon entry of counsel's appearance in CM/ECF, the Clerk of Court shall immediately pay from the Federal Practice Fund the sum of \$1,000 to the Schiffermiller Law Office.

5. A second and last installment of \$1,000 shall become due and payable to the Schiffermiller Law Office upon the entry of judgment or other closing documents in the case.

6. Subject to the prior approval of the court, counsel may incur reasonable expenses when representing Plaintiffs in accordance with the Amended Plan for the Administration of the Federal Practice Fund and the Federal Practice Committee. *See also* NEGenR 1.7(g) and NECivR 54.3 & 54.4.

7. Should Plaintiffs prevail, and counsel be awarded attorney fees and expenses that exceed \$2,000 plus expenses, counsel shall reimburse the Federal Practice Fund for the fees and expenses paid from the fund.

8. Counsel's appointment will not extend to any appeal after trial.

¹ The undersigned has been authorized by the Chief Judge to appoint counsel pursuant to the [Amended Plan for the Administration of the Federal Practice Fund and the Federal Practice Committee](#).

9. The Clerk of the Court is directed to prepare one summons form and one USM-285 form² for each of the following Defendants, using the addresses shown in Plaintiffs' Complaint:

Westside Community School District

909 S. 76th Street
Omaha, NE 68124

Westside Middle School

8601 Arbor Street
Omaha, NE 68124

Elizabeth Meyers, English Teacher,
Westside Middle School, **in her Individual and Official Capacities**
8601 Arbor Street
Omaha, NE 68124

Russell Olsen, Principal,
Westside Middle School, **in his Official Capacity Only**
8601 Arbor Street
Omaha, NE 68124

Enid Schonewise, Assistant Superintendent,
Westside Community School District, **in her Official Capacity Only**
909 S. 76th Street
Omaha, NE 68124

Blane McCann, Superintendent
Westside Community School District, **in his Official Capacity Only**
909 S. 76th Street
Omaha, NE 68124

² Pro se litigants proceeding in forma pauperis are entitled to rely on service by the United States Marshals Service. *Wright v. First Student, Inc.*, 710 F.3d 782, 783 (8th Cir. 2013). Pursuant to 28 U.S.C. § 1915(d), in an in forma pauperis case, “[t]he officers of the court shall issue and serve all process, and perform all duties in such cases.” *See Moore v. Jackson*, 123 F.3d 1082, 1085 (8th Cir. 1997) (language in § 1915(d) is compulsory).

10. The Clerk of the Court shall forward the completed summonses and USM-285 forms to the United States Marshal Service, together with the necessary number of copies of Plaintiffs' Complaint (Filing 1) and of this Memorandum and Order.

11. **The Marshals Service shall serve Defendants by certified mail or any other method authorized by Federal Rule of Civil Procedure 4 (e) or (h).**³

12. The Marshals Service shall serve all process in this case without prepayment of fees from Plaintiffs.

13. Federal Rule of Civil Procedure 4 (m) requires service of the complaint on a defendant within 90 days of filing the complaint. However, Plaintiffs are granted, on the Court's own motion, an extension of time until 90 days from the date of this order to complete service of process.

14. At the direction of the Court, this case is removed from the pro se docket as counsel has been appointed to represent Plaintiffs. *See* General Order No.

³ Under Rule 4(e), an individual may be served by "following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made." Fed. R. Civ. P. 4(e)(1). Permissible methods for service of a summons in Nebraska are personal service, residential service, certified mail service, and designated delivery service. *See* Neb. Rev. Stat. § 25-505.01. Rule 4(e) also provides for service by: "(A) delivering a copy of the summons and of the complaint to the individual personally; (B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or (C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process." Fed. R. Civ. P. 4(e)(2). Under Rule 4(h), a "corporation or a partnership or other unincorporated association that is subject to suit under a common name" may be served "(A) in the manner prescribed by Rule 4(e)(1) for serving an individual; or (B) by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and—if the agent is one authorized by statute and the statute so requires—by also mailing a copy of each to the defendant; ..." Fed. R. Civ. P. 4(h)(1).

2020-01, ¶ 5. The Clerk's Office shall randomly assign new judges to this case and shall request a reassignment order from the Chief Judge.

Dated this 17th day of November, 2020.

BY THE COURT:



Richard G. Kopf
Senior United States District Judge